

REMARKS

Claims 1-13, 23 and 24 are currently pending in this application. Claims 7 and 24 have been withdrawn and claims 14-22 and 25-26 have been cancelled in view of an earlier Restriction Requirement. Therefore, claims 1-6, 8-13 and 23 remain pending in this application. This Amendment amends the specification and claims 1, 4, 5 and 23. Support for the amendments to the specification and claims can be found in the specification, drawings and claims as originally filed. No new matter has been added.

The specification has been amended to include language that is consistent with the language in the amended claims.

The Examiner did not acknowledge a claim of priority to the provisional application in this Office Action. Applicants respectfully request that the Examiner acknowledge our claim of priority to provisional Application No. 60/419,609, as indicated on page 1, paragraph [0001] of the present application and in Paragraph 5 of the filed Declaration and Power of Attorney.

Also accompanying this Amendment is a Supplemental Information Disclosure Statement that includes the two web site pages identified in the Information Disclosure Statement dated August 27, 2004. Although our records show that these web pages were submitted to the United States Patent and Trademark Office (see enclosed copy of file receipt), the Examiner apparently did not receive them. We believe that the Patent Office misplaced these pages and, therefore, Applicants are resubmitting the web pages in the Supplemental Information Disclosure Statement. Entry of the web pages is respectfully requested.

The Examiner has rejected claims 1-6, 8, 10-13 and 23 under 35 U.S.C. § 102(b) for anticipation by U.S. Patent No. 4,047,663 to Reynolds (hereinafter "the Reynolds patent") for the reasons discussed on page 2 of the Office Action. In response, independent claims 1 and 23 have been amended to include the language "wherein at least one slot extends transversely through each of the longitudinally-extending shoulder members from the upper surface to the bottom surface of the base plate." Support for the amendment to the claims can be found, for example, in Figs. 1-4 of the drawings. As discussed below, the Reynolds patent does not disclose this limitation.

The Reynolds patent is directed to a rail fastener that includes a rail plate 24 having a pair of openings 26 on opposite sides thereof for receiving elements 20 and 22

therein. The rail plate 24 is covered on all its surfaces, including the inner peripheries of the openings 26, with a layer of elastomeric material 28, which is preferably polyurethane (Figs. 1 and 2 and column 6, lines 52-61). The rail plate 24 has a central portion 30 thereof which is disposed for supporting the rail 10 thereon. The rail plate 24 is also formed with a pair of U-shaped sections 32 which are contiguous (i.e., extend in a longitudinal direction) with the central portion 30 and provides shoulders for bearing against and laterally restraining the lower flanges of the rail 10. The U-shaped sections 32 have voids (column 8, lines 49-51) defined on the respective ends of the U-shaped sections 32 for receiving one end of clips 16 and 18, respectively, therein (Fig. 2 and column 6, line 62 to column 7, line 2). The Reynolds patent does not disclose voids that extend transversely through the U-shaped sections 32 from an upper surface to a bottom surface of the rail plate 24.

Because the Reynolds patent does not teach each and every element as claimed in amended independent claims 1 and 23, withdrawal of the rejections of claims 1-6, 8, 10-13 and 23 is respectfully requested.

Furthermore, it would not be obvious to one of ordinary skill in the art to modify the rail plate of the Reynolds patent by placing slots that extend transversely through the shoulder members and arrive at the claimed dimension. There must be some motivation in the Reynolds patent to make this modification, absent consulting Applicants' specification. The proposed modification of placing slots transversely through the shoulder members of the rail plate of the Reynolds patent would destroy its intended function. In the Reynolds patent, the U-shaped sections 32 (i.e., shoulders) of the rail plate extend in a longitudinal direction and the voids defined in the U-shaped sections 32 also extend in the same direction for receiving the respective ends of clips 16, 18 (column 8, lines 49-52). The clips 16, 18 are dimensioned such that, when they are inserted into the voids of the U-shaped sections 32 and bear against the lower flanges of the rail 10, they are in a flex state, thereby clamping the rail 10 onto the rail plate 14 (column 7, lines 11-17). By placing a slot through the U-shaped sections 32, wherein the slots extend transversely from an upper surface to a bottom surface of the rail plate, a fastener could not pass through the slots because of clips 16, 18. On the other hand, if slots were placed transversely through the U-shaped sections 32 and contained fasteners, the clips 16, 18 could not pass through the voids of U-shaped sections, thereby making the clips 16, 18 inoperable. Because the function of the clips 16, 18 (i.e., bearing against rail flanges) would be destroyed, there is no motivation in the Reynolds patent to

place slots that extend transversely through the U-shaped sections 32 from an upper surface to a bottom surface of the rail plate 24 in order to receive fasteners for securing the railroad rail. In view of the above, withdrawal of the rejection of claims 1-6, 8, 10-13 and 23 is respectfully requested.

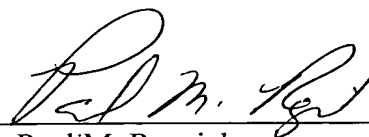
The Examiner has rejected claim 9 under 35 U.S.C. § 103(a) for obviousness over the Reynolds patent in view of U. S. Patent No. 4,635,846 to Todd. The Examiner has combined Todd with the Reynolds patent for the asserted teaching of the use of an electrically-insulating material containing reinforcing fibers (column 3, lines 63-66). Because none of these references discloses a tie plate having at least one slot that extends transversely through each of the longitudinally-extending shoulder members from an upper surface to a bottom surface of the base plate, dependent claim 9 is believed to be distinguishable over these references for the same reasons discussed above in connection with amended independent claim 1.

CONCLUSION

In view of the foregoing, Applicants believe that claims 1-6, 8-13 and 23 are patentable over the prior art of record and are in condition for allowance. Entry of the Supplemental Information Disclosure Statement is also respectfully requested.

Respectfully submitted,

WEBB ZIESENHEIM LOGSDON
ORKIN & HANSON, P.C.

By 
Paul M. Reznick
Registration No. 33,059
Attorney for Applicants
700 Koppers Building
436 Seventh Avenue
Pittsburgh, Pennsylvania 15219-1818
Telephone: 412-471-8815
Facsimile: 412-471-4094